No. 87-765

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ARMSTRONG RUBBER COMPANY; R. G. DeANGELO; and RUSSELL WEYMOUTH,

Petitioners,

vs.

LOCAL 670, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO; INTERNATIONAL UNION, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO; MILAN STONE; BOB G. LONG; and LOCAL 703, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether A Challenge To Concurrent Findings That A Grievance Is Arbitrable Presents A Question For Review.

2. Whether The Decision Of The Sixth Circuit Or Its Practical And Particularized Analysis Of Rule 19(b) Factors Conflicts With Decisions In Other Circuits.

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Respondent Local 670, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Sixth Circuit's opinion, which is reported at 822 F.2d 613.

STATEMENT OF THE CASE

Respondent Local 670 adopts the statement of the Sixth Circuit,[1] emphasizing two matters pertinent here. First, Local 670 and four other local unions were parties to a nationwide collective bargaining agreement with Armstrong Rubber Company. The Agreement locked in wages[2] and permitted amendments only upon majority approval of the membership of the five locals.[3] Thus, the grievance of Local 670 challenging the company's implementation of a $2.89 per hour wage cut in California (Local 703) despite two nationwide votes rejecting the amendment squarely presented a contractual issue.

Second, after the district court concluded that Local 703 was a person to be joined if feasible under F.R.Civ.P 19(a), Local 670 issued a summons and complaint. Local 670 also wrote Local 703, offering to allow Local 703 to participate in the arbitration and agreeing to conduct the arbitration in California. Local 703 did not respond to this offer and the trial court gave no consideration to this proposal in holding that Local 703 was indispensable.

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[1] 822 F.2d at 615-17. (Appendix to Petition, at 59).

[2] *Id.* at 618 n. 3 (quoting Article XIV, Section 56 of the Agreement).

[3] *Id.* (quoting Article XIV, Section 56 of the Agreement).

REASONS FOR DENYING WRIT

I.

The Concurrent Findings Of The Lower Courts That The Grievance Is Arbitrable And The Absence Of Any Evidence To The Contrary Render Review Of This Issue Improper.

Both the district and appellate courts concluded that the grievance challenging the wage reduction as violative of the Agreement was arbitrable.[4] Armstrong offered no evidence below, much less forceful evidence,[5] in support of its assertion to the contrary. Now, Armstrong invites this Court to reinterpret the contract and suggests that is reconsider the assertion below that this grievance related solely to an internal union dispute. While arbitrability is a legal conclusion, the challenge to that conclusion here is based on a redetermination of facts previously adjudicated. It is settled that review of such concurrent findings by writ of certiorari is inappropriate.[6]

II.

Given The Practical And Particularized Inquiry Mandated By F.R.Civ.P. 19(b), The Sixth Circuit's Conclusion That A California Union Is Not Indispensable To An Action In Tennessee To Compel Arbitration Does Not Conflict With Decisions In Other Circuits Or Depart From Precedent.

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[4] 822 F.2d at 617-18, *citing United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 367 U.S. 574, 582-83 (1960).

[5] *A.T.&T. Technologies Inc. v. Communication Workers of America*, 475 U.S. 643, 106 S.Ct. 1415, 1419, 89 L.Ed.2d 648 (1986).

[6] *Branti v. Finkel*, 455 U.S. 507, 512 n. 6 (1980).

Long before the 1966 amendments to rule 19, this Court recognized that the talismanic invocation of the interests of nonparties should not bar litigants before the court from a complete determination on the merits.[7] The express provisions of the 1966 amendments and the comments thereto serve only to emphasize this fundamental concern, highlighting the necessity to evaluate each case practically, including the fashioning of alternatives to dismissal.[8]

Rule 19(b) identifies the principal factors that must be considered in determining whether to proceed in the absence of a person. The nature of these factors compels courts to engage in a case-by-case analysis[9] of both the substantive and procedural interests implicated by the absence of a party as well as the weight to be accorded those interests.[10] At bottom, the focus is practical:

> Rule 19 does not prevent the assertion of compelling interests; it merely commands the courts to examine each controversy *to make certain that the interests really exist.*[11]

Here, the Sixth Circuit complied strictly with the command of rule 19. First, the court identified the substantive interest at stake, namely the "compelling federal labor policy of requiring

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[7] *Shields v. Barrow*, 17 U.S. (How.) 130, 142 (1854) (interest of nonparty should not bar complete decision as to litigants).

[8] *Provident Tradesmen Bank & Trust Co. v. Patterson*, 390 U.S. 102, 111-12 (1968) (F.R.Civ.P. 19(b) (requires consideration of solutions to "joinder stymie").

[9] 390 U.S. at 118 n. 14 *and text.*

[10] *Id.* at 119.

[11] *Id.* (emphasis added).

parties to honor their promises to arbitrate."[12] Second, in view of this interest and the asserted interests of the company and the California local, the court evaluated whether Local 703 was a person to be joined if feasible. While the court considered it highly questionable that Local 703 qualified as a person to be joined under rule 19(a), it presumed that it did. Proceeding to an analysis of the largely undisputed facts applicable to each of the factors in subsection (b), the court then concluded that the interest of Local 703 — its presence in the arbitration proceeding — would be adequately protected by allowing it to participate in the arbitration. Given this, the Sixth Circuit held that the trial court had misapprehended the interests of Local 703 and, consequently, the weight to be accorded, those interests in light of the considerations mandated by rule 19(b).[13]

Armstrong's assertion that the decision below adopts a standard of review in conflict with the abuse of discretion standard in other circuits ignores the Sixth Circuit's express recognition that prior decisions in the circuit had "implicitly adopted the abuse of discretion standard for Rule 19 issues."[14] Armstrong's asserted conflict also evidences a misunderstanding about the role of an appellate court when applying the abuse of discretion standard; such review is aimed at determining whether the trial court exceeded its discretion or erred as a matter of law.[15] Finally, even assuming that the Sixth Circuit applied a lower standard of review than that urged by Armstrong, the result is correct

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[12] 822 F.2d at 619, *citing, Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 265 (1964). *See also In re Meba Pacific Coast District*, 114 L.R.R.M. 3431, 3436 (D.C.Cir. 1983).

[13] 822 F.2d at 619, 621-22.

[14] 822 F.2d at 618-19.

[15] *Beck v. Wings Field, Inc.*, 122 F.2d 114, 116 (3d Cir. 1941); *cf. Cohen v. Young*, 127 F.2d 721, 725 (6th Cir. 1942) ("discretion" implies absence of hard-and-fast rule, not that decision nonreviewable).

under either standard. Specifically, the Sixth Circuit concluded that the district court had incorrectly identified the interests at stake; this error infected the district court's ensuing analysis. The Sixth Circuit then conducted a detailed inquiry as to each rule 19 factor,[16] concluding that when the correct interests were analyzed, it was clear that the absent local union was not an indispensable party to the action to compel arbitration.[17] Put differently, neither the decision nor the analysis of the Sixth Circuit here conflicts with decisions in other circuits or departs from precedent.

CONCLUSION

For the above reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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[16] Comparison of the abuse of discretion cases cited by Armstrong compels the conclusion that the asserted conflict is hypothetical, not real. The Sixth Circuit's analysis precisely parallels rule 19 decisions applying the abuse of discretion standard. *See, e.g., Steel Valley Auth. v. Union Switch Land Signal Div.*, 809 F.2d 1006, 1010-11 (3d Cir. 1987). Also, the scope and manner of review in other cases was perhaps affected by procedural issues. *Costal Modular Corp. v. Laminators, Inc.*, 635 F.2d 1102 (4th Cir. 1980) (appeal of judgment); *General Tire & Rubber Co. v. Watkins*, 326 F.2d 9216 (4th Cir. 1964) (mandamus). *But see Walsh v. Centeio*, 692 F.2d 1239, 1241 (9th Cir. 1982) (standard of review determines outcome).

[17] When, as here, the facts are undisputed, it is settled that appellate review is broader. *E.g., Horn v. O. L. Osborn Contracting Co.*, 591 F.2d 318, 320 (5th Cir. 1979); *Flannery Bolt Co. v. Flannery*, 86 F.2d 43 (3d Cir. 1936).